

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Southern District of Texas on the following

☒ Trademarks or ☐ Patents. (☐ the patent action involves 35 U.S.C. § 292.);

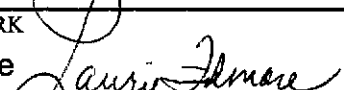
DOCKET NO. H-11-cv-1457	DATE FILED 4/15/2011	U.S. DISTRICT COURT Southern District of Texas
PLAINTIFF MoroccanOil, Inc		DEFENDANT H.E. Butts Grocery Company, a Texas private company, dba H-E-B, and Does 1 through 10, inclusive
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 3,478,807		See attached complaint
2 3,684,910		
3 3,684,909		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK David J. Bradley	(BY) DEPUTY CLERK Laurie Filmore 	DATE 4/18/2011
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MOROCCANOIL, INC., a California
Corporation,

Plaintiff,

v.

H. E. Butts Grocery Company, a Texas private
company, d/b/a H-E-B, and DOES 1 through 10
inclusive,

Defendants.

CIVIL ACTION NO. 4:11-cv-1457

JURY TRIAL DEMANDED

COMPLAINT

JURISDICTION

1. This action arises under and this Court has original jurisdiction pursuant to 15 U.S.C. § 1121 (Original Jurisdiction – Trademarks), 28 U.S.C. § 1331 (Federal Question), 28 U.S.C. § 1338(a) (Original Jurisdiction – Patents and Trademarks), 28 U.S.C. § 1332 (Diversity of Citizenship), 28 U.S.C. § 1338 (b) (Original Jurisdiction - Unfair Competition) and 28 U.S.C. § 1367 (Supplemental Jurisdiction).

VENUE

2. Venue is proper in this District under 28 U.S.C. §§ 1391(a)(2) and 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this judicial district.

SUMMARY OF MOROCCANOIL'S CLAIMS

3. Plaintiff MoroccanOil, Inc., a California corporation located in Los Angeles, California ("Plaintiff"), distributes in Harris County, Texas and throughout the United States, "salon only" hair care products, including: (a) MoroccanOil Oil Treatment, (b) MoroccanOil Hydrating Styling Cream, (c) MoroccanOil Restorative Hair Mask, (d) MoroccanOil Intense

Hydrating Mask, (e) MoroccanOil Intense Curl Cream, (f) MoroccanOil Glimmer Shine Spray, (g) MoroccanOil Moisture Repair Shampoo, (h) MoroccanOil Moisture Repair Conditioner, (h) MoroccanOil Luminous Hair Spray, and (i) MoroccanOil Light Oil Treatment. All of these products (collectively the "MoroccanOil Products") contain a signature ingredient, argan oil, that is produced from the kernels of the argan tree which is native to North Africa.

4. MoroccanOil Oil Treatment is the most popular product in the line of MoroccanOil Products. It is packaged in 3.4 ounce, amber colored, druggist-style bottles with black screw-on caps. MoroccanOil Oil Treatment bottles have rectangular-shaped, light blue labels containing the MoroccanOil Trademarks and logos and information describing the contents and the usage of the product. The Oil Treatment inside the bottles is a viscous mix of argan oil and other ingredients and is light brown in color.

5. Defendant H.E. Butts Grocery Co. is distributing and selling counterfeit MoroccanOil Oil Treatment. The counterfeit bottles of MoroccanOil Oil Treatment distributed and sold by H.E. Butts Grocery Co.: (a) are packaged in similar 3.4 fluid ounce, amber colored, druggist-style bottles with black screw-on caps, (b) have rectangular-shaped, light blue labels containing imitations of the MoroccanOil trademarks, logos and information describing the contents and the usage of the product, that are indistinguishable from authentic MoroccanOil Oil Treatment and (c) contain counterfeit oil inside the bottles that has a color and fragrance similar to that of genuine MoroccanOil Oil Treatment. Suspected counterfeits of MoroccanOil Oil Treatment were purchased from a Houston, Texas H-E-B store.

6. MoroccanOil does not sell its products to H.E. Butts Grocery Co. and H.E. Butts Grocery Co. is not an authorized MoroccanOil supplier or distributor.

THE PLAINTIFF

7. MoroccanOil, Inc. is a California corporation doing business from its principal place of business at 16311 Ventura Boulevard, Suite 1200, Los Angeles, California. MoroccanOil distributes the MoroccanOil Products throughout the United States. Plaintiff MoroccanOil, Inc. is referred to herein as "MoroccanOil" or "Plaintiff".

THE DEFENDANTS

8. Plaintiff is informed and believes that H.E. Butts Grocery Company is a Texas private company doing business as "H-E-B", with its corporate headquarters located at 646 S. Main Ave, San Antonio, TX 78204. H-E-B makes sales to consumers throughout Texas via its grocery stores.

9. Plaintiff believes there are other businesses that distribute and sell counterfeit MoroccanOil Products and sues them by fictitious names DOES 1 - 5.

10. Plaintiff believes there is a manufacturing company, or companies, that manufacture and sell counterfeit MoroccanOil Products and sues them by fictitious names DOES 6 - 10.

11. Other than as is alleged in this Complaint, Plaintiff is ignorant of the true identities and participation of Does 1 through 10, inclusive, and therefore sues them by such fictitious names. Plaintiff is informed and believes that each of the Defendants designated as a Doe is liable in some manner for the acts and omissions, damages and injuries of which Plaintiff alleges in this Complaint. Plaintiff will seek to amend this Complaint to state the true identities of Does 1 through 10 when ascertained.

12. On information and belief, H-E-B and each of the Doe defendants (collectively "Defendants"), were at all relevant times acting to the fullest extent recognized by law as the

agent, employee or co-conspirator of each of the other Defendants and that in committing the acts and omissions alleged herein and causing the damage and injuries alleged, was acting within the scope of such agency, employment, conspiracy, joint venture or partnership relationship. The Defendants have committed acts in furtherance of the conspiracy, have given aid and encouragement to the conspirators and have ratified and adopted the acts of their co-conspirators.

13. On information and belief, there exists, and at all times herein mentioned there existed, a unity of interests and ownership between Defendants such that any individuality and separateness between the Defendants never existed or has ceased to exist, and the Defendants are in each instance the alter ego of the other Defendants who control each entity. To adhere to the fiction of the separate existence of the entities as separate and distinct from the Defendants identified with them and owning and controlling them would permit an abuse of the corporate and other entity privileges, would sanction fraud and would promote injustice.

THE MOROCCANOIL PRODUCTS

14. As alleged in Paragraphs 3 through 4 above, the genuine MoroccanOil Oil Treatment is packaged in 3.4 ounce, amber colored, druggist-style bottles with black screw-on caps. The light blue, rectangular-shaped front labels of the MoroccanOil Oil Treatment contain the MoroccanOil logo with an orange-colored "M" and the word "MOROCCANOIL" in white, capital letters vertically up the left hand side of the label, as well as the words "Oil treatment for all hair types", "MoroccanOil Series", "and alcohol free" in English, French and Spanish. The light blue, rectangular-shaped back labels of the MoroccanOil Oil Treatment contain the MoroccanOil logo with "MOROCCANOIL" in orange, capital letters, a description of the product and its usage in English, French and Spanish, the ingredient list, and the words "sold exclusively by professional salons". Each genuine bottle includes a sticker that extends from the

top of the bottle cap down to the front of the bottle that includes the MoroccanOil logo with an orange "M" with the word "MoroccanOil" through it in white letters, and the words "The Original" in English and French. MoroccanOil Products bear the trademarks, trade names and trade dress described below.

15. Manufacturers, such as MoroccanOil, apply to the Uniform Code Council to obtain barcode numbers for their products. These barcodes are widely used by manufacturers, distributors and sellers to keep track of and identify the products they sell. MoroccanOil was issued an EAN-13 (international) UPC manufacturer number of 7290011. The first three numbers, 729, refer to the fact that MoroccanOil manufactures its products in Israel. UPC barcode number 7290011-521011 refers to the 3.4 ounce size of MoroccanOil Oil Treatment and number 7290011-521059 refers to the 6.8 ounce size of MoroccanOil Oil Treatment (these numbers are collectively the "MoroccanOil UPC Numbers"). MoroccanOil prints the MoroccanOil UPC Numbers on the labels of all of its products during their manufacture.

16. MoroccanOil Oil Treatment has a unique viscosity, feel and smell. MoroccanOil's trade dress encompasses the size, shape, color, wording, graphics, packaging and overall appearance of the MoroccanOil Products as well as the placement and position of the MoroccanOil Trademarks on the labels and packaging ("MoroccanOil Trade Dress"). MoroccanOil Trade Dress is non-functional, and inherently distinctive, and has become uniquely associated with MoroccanOil in the marketplace as the source of these products.

17. The following images are true and correct photographs of the front and back side of a bottle of genuine MoroccanOil Oil Treatment:



MOROCCANOIL'S INTELLECTUAL PROPERTY

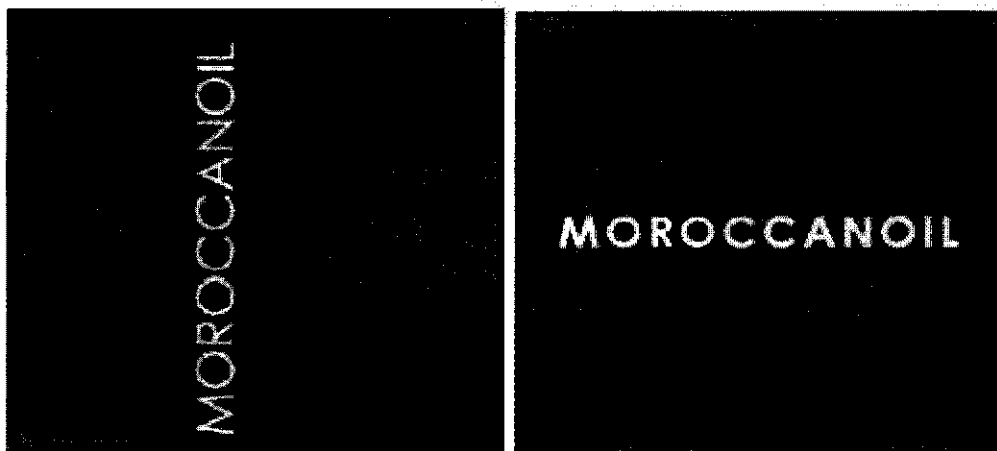
18. Moroccan oil is the owner of numerous federally registered trademarks including: the word “MOROCCANOIL”(U.S. Reg. No. 3,478,807), the vertical “M Moroccan oil Design” (U.S. Reg. No. 3,684,910), and the horizontal “M Moroccan oil Design” (U.S. Reg. No. 3,684,909). The trademarks are registered in Class 3 on the Principal Register of the United States Patent and Trademark Office. These trademarks are collectively referred to as “Moroccan oil Trademarks”. Plaintiff owns all of the right, title and interest in the United States to the Moroccan oil Trademarks and the goodwill associated with them.

19. The following images are true and correct photographs of the Moroccan oil Trademarks:

**TRADEMARK
PRINCIPAL REGISTER**

MOROCCANOIL

USPTO Registration No. 3,478,807



USPTO Registration No. 3,684,910

USPTO Registration No. 3,684,909

20. Since the time of their introduction, Plaintiff has continuously used one or more of the Moroccanoil Trademarks in commerce in the United States. All Moroccanoil Products sold in commerce bear one or more of the Moroccanoil Trademarks. The Moroccanoil Trademarks are inherently distinctive and have acquired secondary meaning in the marketplace. Moroccanoil Products are high-quality beauty products that are held in high regard, and used regularly by successful stylists and salons in Los Angeles County, California and throughout the United States.

AUTHORIZED DISTRIBUTION OF MOROCCANOIL PRODUCTS

21. Plaintiff's distribution arrangements restrict the sale of MoroccanOil Products to professional salons ("Authorized Salons") and licensed cosmetologists for use on or sale to consumer salon patrons (the "Authorized Use"). The contracts of the Plaintiff with its distributors prohibit any sales, either directly or indirectly, to unlicensed cosmetologists or salons. The restrictions prohibit any sales to general merchandisers such as H-E-B as well as to general merchandisers or suppliers such as those Doe Defendants that supplied H-E-B. When general merchandisers sell MoroccanOil Products outside the authorized system, it damages the goodwill of the Plaintiff and reduces the sales of the Plaintiff. It also creates a secondary gray or black market wherein counterfeit MoroccanOil Products are sold.

22. Defendants seek to profit from the success of the Plaintiff. However, Defendants know that the restrictions stated in the distribution agreements of MoroccanOil make it impossible for them to obtain MoroccanOil Products from Plaintiff, or any other MoroccanOil distributors. Therefore, Defendants and their associates resort to deceptive, fraudulent, and illegal trade practices to obtain MoroccanOil Products. These practices include inducing MoroccanOil distributors, salons, and their employees to cheat Plaintiff by violating their distribution agreements. Defendants encourage MoroccanOil distributors and salons to cheat Plaintiffs by encouraging the distributors to order more MoroccanOil Products than the distributor or any salon needs. The excess MoroccanOil Products are then sold, directly or indirectly, to Defendants. In such instances, the MoroccanOil distributor or salon orders excess MoroccanOil Products with the intent to defraud Plaintiff and to breach their agreements not to sell MoroccanOil Products except to salons or consumers for personal use. Defendants also encourage the MoroccanOil distributors to falsify the sales reports of MoroccanOil Products in an

attempt to obscure these fraudulent sales. This falsification hinders Plaintiff's ability to locate these fraudulent practices.

23. In addition, the activities and methods of Defendants enable the Defendants and others to pass counterfeit versions of MoroccanOil Products intermixed with genuine products. This occurs because: (a) Defendants obtain the MoroccanOil Products through surreptitious sources, which are difficult or impossible to trace, thereby making it difficult to spot counterfeit products; and (b) Defendants often conduct transactions with no paperwork, falsified paperwork, or destroy the paper work involved so that the transaction is difficult or impossible to trace. These actions enable counterfeit MoroccanOil Products to enter the stream of commerce commingled with authentic MoroccanOil Products in a manner that makes it hard, if not impossible, to trace and halt.

THE COUNTERFEIT PRODUCTS

24. The counterfeit MoroccanOil Products distributed and sold by Defendants are defective imitations of genuine MoroccanOil Oil Treatment. The copying was intentional, willful and malicious, intending to deceive consumers. The counterfeits are designed to look identical to genuine MoroccanOil Products as they are packaged in nearly identical, amber colored, druggist-style bottles with black screw-on caps. The trade dress of the counterfeits is identical to that of the genuine products, including the size, shape, color, wording, and overall appearance of the products. The counterfeit labels bear copies of MoroccanOil's Trademarks.

25. The labels on the counterfeits recite numerous false statements, including:

a. *Batch Numbers:* The counterfeits list a batch number of "185EH" even though chemical testing shows they are counterfeit, thus, they did not come from a genuine batch with No. 185EH.

b. *Designations of Origin and Distribution:* The counterfeits are marked “Made in Israel by A.P.P. Ltd.” which is false because the contents of the bottles are counterfeit and could not have come from A.P.P. Ltd. in Israel. Similarly, the counterfeits are marked “Distributed by MoroccanOil North America” which is false because the bottles were not distributed by MoroccanOil in North America.

c. *UPC Codes:* The counterfeits bear a UPC code number of 7290011-521011 which is false because the products are not genuine and could not have been manufactured by MoroccanOil.

26. The counterfeit bottles, labels and trade dress are not genuine since they were not used by MoroccanOil in the manufacture of its genuine products. Laboratory analysis of the oil inside the counterfeits confirms that the oil is “distinctly different” from genuine MoroccanOil Oil Treatment since the oil in the counterfeits has a: (a) significantly different type and concentration of silicones and (b) significantly different visible light absorbance amount.

27. A bottle of “MoroccanOil Oil Treatment” was purchased from an H-E-B store in Houston, Texas on January 6, 2009. The following images are true and correct photographs of the counterfeit product purchased from H-E-B:



**FIRST CLAIM FOR RELIEF TRADEMARK COUNTERFEITING AND
INFRINGEMENT (15 U.S.C. § 1114) AGAINST ALL DEFENDANTS**

28. Plaintiff alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 27, as if fully set forth herein.

29. Based on the extensive advertising by Plaintiff of the Moroccan oil Trademarks, its extensive sales and the widespread popularity of Moroccan oil Products, any product bearing one or more of the Moroccan oil Trademarks is immediately associated by purchasers and the public as being a genuine product of Moroccan oil.

30. The use of one or more copies of the Moroccan oil Trademarks by Defendants on the counterfeit bottles of Moroccan oil Oil Treatment, which Defendants transported, offered for sale and sold, tends to and is more than likely to confuse and deceive consumers into believing that the counterfeit Moroccan oil Products are genuine. In fact, the purported Moroccan oil

Products supplied by Defendants are not genuine Moroccanoil Products and bear counterfeit and infringing copies of Moroccanoil Trademarks.

31. The acts of Defendants have been committed without the consent of Plaintiff. The acts of Defendants are likely to cause confusion and mistake in the minds of the purchasing public, and, in particular, tend to and do falsely create the impression that the counterfeit products sold by Defendants are manufactured, distributed, warranted, authorized, sponsored, or approved by Plaintiff when, in fact, they are not.

32. As a direct and proximate result of the counterfeiting and infringement of the Moroccanoil Trademarks, Plaintiff has suffered damages in the form of increased costs and reduced revenue in an amount unknown but not less than \$500,000 and those damages will continue to increase every day. Plaintiff will amend its pleadings, at or before trial, to conform to proof to state the amount of their damages.

33. As a proximate result of their wrongful conduct, Defendants have been unjustly enriched. Plaintiff demands and is entitled to an accounting from each of the Defendants, including all information necessary to permit Plaintiff to determine the gains, profits and advantages that Defendants have obtained by reason of their wrongful conduct described herein.

34. Plaintiff has no adequate remedy at law. Monetary compensation will not afford Plaintiff adequate relief. The acts and omissions of Defendants as alleged herein will engender the need for a multiplicity of judicial proceedings and will cause damages to Plaintiff that are difficult, if not impossible, to measure. Unless Defendants are preliminarily and permanently enjoined from committing the unlawful acts alleged, including infringement of the Moroccanoil Trademarks, Plaintiff will continue to suffer irreparable harm. Injunctive relief is therefore

appropriate pursuant to 15 U.S.C. § 1116 to prevent Defendants from engaging in any further violations of 15 U.S.C. § 1114.

35. Upon information and belief, the activities of Defendants complained of herein constitute willful and intentional counterfeiting infringement of the Moroccanoil Trademarks in violation of the Lanham Act, including, but not limited to, 15 U.S.C. § 1114. The willfulness of the counterfeiting and infringement by the Defendants is evidenced by the similar bottles, labels, wording, logos and oil of the counterfeits. The Defendants' activities are in total disregard of the rights of the Plaintiff. As a result, Plaintiff is further entitled to damages and remedies as provided by 15 U.S.C. §§ 1116 and 1117.

**SECOND CLAIM FOR RELIEF, FALSE DESIGNATION OF ORIGIN,
AND FALSE REPRESENTATION (15 U.S.C. § 1125(a)) AGAINST ALL DEFENDANTS**

36. Plaintiff alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 35, as if fully set forth herein.

37. Defendants distribution, sale, advertisement, transportation and delivery of counterfeit Moroccanoil Products constitutes a false designation of origin and a false representation that the counterfeit products are manufactured, sponsored by or affiliated with Plaintiff.

38. As a direct and proximate result of violations of 15 U.S.C. § 1125(a), Plaintiff has suffered damages in the form of increased costs and reduced revenue in an amount unknown but not less than \$500,000 and those damages will continue to increase every day. Plaintiff will amend its pleadings, at or before trial, to conform to proof to state the amount of its damages.

39. As a proximate result of their wrongful conduct, Defendants have been unjustly enriched. Plaintiff demands, and is entitled to, an accounting from Defendants, including all

information necessary to permit Plaintiff to determine the gains, profits and advantages that Defendants have obtained by reason of their wrongful conduct described herein.

40. Plaintiff has no adequate remedy at law. Monetary compensation will not afford Plaintiff adequate relief. The acts and omissions of Defendants as alleged herein will engender the need for a multiplicity of judicial proceedings and will cause damages to Plaintiff that are difficult, if not impossible, to measure. Unless Defendants are preliminarily and permanently enjoined from committing the unlawful acts alleged, including infringement of the Moroccanoil Trademarks, Plaintiff will continue to suffer irreparable harm. Injunctive relief is therefore appropriate pursuant to 15 U.S.C. § 1116 to prevent Defendants from engaging in any further violations of 15 U.S.C. § 1125(a).

41. Upon information and belief, the activities of the Defendants complained of herein constitute willful and intentional infringement of Moroccanoil Trademarks in violation of the Lanham Act, including, but not limited to, 15 U.S.C. § 1125(a). The willfulness of the Defendants' infringement is evidenced by the similar bottles, labels, wording, logos, and contents of the counterfeit products. The activities of Defendants activities are in total disregard of the rights of the Plaintiff. As a result, Plaintiff is further entitled to damages as provided by 15 U.S.C. §§ 1116 and 1117.

**THIRD CLAIM FOR RELIEF COMMON LAW UNFAIR COMPETITION AND
CONSPIRACY TO UNFAIRLY COMPETE AGAINST ALL DEFENDANTS**

42. Plaintiff alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 41, as if fully set forth herein.

43. Defendants use unfair trade practices to advertise, distribute and sell counterfeit Moroccanoil Products in competition with Moroccanoil.

44. This common law unfair competition includes, but is not limited to, the following separate activities:

- a. the marketing and advertising of counterfeit Moroccanoil Products;
- b. the transportation and delivery of counterfeit Moroccanoil Products;
- c. the distribution and sale of counterfeit Moroccanoil Products; and
- d. other such acts of unfair competition.

45. As a proximate result of their wrongful conduct, Defendants have been unjustly enriched. Moroccanoil demands, and is entitled to, an accounting from each of the Defendants, including all information necessary to permit Plaintiff to determine the gains, profits and advantages that Defendants have obtained by reason of their wrongful conduct described herein.

46. As a direct and proximate result of the unfair competition and unfair business practices, Plaintiff has suffered damages in the form of increased costs and reduced revenue in an amount unknown but not less than \$500,000 and those damages will continue to increase every day. Plaintiff will amend its pleadings, at or before trial, to conform to proof to state the amount of its damages.

47. Plaintiff has no adequate remedy at law. Monetary compensation will not afford Plaintiff adequate relief. The acts and omissions of Defendants as alleged herein will engender the need for a multiplicity of judicial proceedings and will cause damages to Plaintiff that are difficult, if not impossible, to measure. Unless Defendants are preliminarily and permanently enjoined from committing the unlawful acts alleged Plaintiff will continue to suffer irreparable harm. Injunctive relief is therefore appropriate to prevent Defendants from engaging in any further acts of unfair competition.

48. The conduct of Defendants is fraudulent, malicious and oppressive. The Defendants have engaged in the illegal transportation, delivery, distribution and sale of counterfeit MoroccanOil Oil Treatment. The conduct of Defendants is despicable. Their conduct subjects Plaintiff to cruel and unjust hardship by which its rights are brazenly attacked and stolen. The conduct of Defendants is done willfully and Defendants engage in their misconduct in conscious disregard of the rights of the Plaintiff. Punitive damages should be awarded to punish Defendants and deter similar conduct in the future.

**FOURTH CLAIM FOR RELIEF STATE LAW DILUTION
AGAINST ALL DEFENDANTS**

49. Plaintiff alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 48, as if fully set forth herein.

50. Based on the extensive advertising, sales and widespread popularity of MoroccanOil Products, the MoroccanOil Trademarks are distinctive, or have become distinctive, of the MoroccanOil Products.

51. The use of one or more copies of the MoroccanOil Trademarks by Defendants and the use of MoroccanOil's trade dress on the counterfeit bottles of MoroccanOil Oil Treatment, which Defendants transported, offered for sale and sold, is likely to cause dilution of the distinctive quality of the MoroccanOil Trademarks and trade dress associated with the MoroccanOil Products. Specifically, the counterfeit MoroccanOil Products tarnish the genuine MoroccanOil Products in such a manner that the public will either associate the lack of quality or prestige in the Defendants' counterfeit MoroccanOil Products with that of the Plaintiff's genuine MoroccanOil Products.

52. The acts of Defendants violates Business and Commerce Code Section 16.29. Unless Defendants are preliminarily and permanently enjoined from committing the unlawful

acts alleged, Plaintiff will continue to suffer irreparable harm, for which the Plaintiff has no adequate remedy at law. The Plaintiff is entitled to a restraining order and injunction pursuant to Texas Rules of Civil Procedure 680 et seq.

PRAYER

WHEREFORE, Plaintiff prays for an award as follows:

1. Preliminary and permanent injunctive relief against all Defendants, and each of them, and their officers, agents, attorneys, representatives and assigns, and all persons acting in active concert or participation with them, from doing any of the following acts, either directly or indirectly, and from doing any act prefatory to the prohibited acts:
 - a. Marketing, advertising, acquiring, transporting, distributing, offering to sell or selling any counterfeit bottles of Moroccanoil Oil Treatment product bearing counterfeit Moroccanoil trademarks;
 - b. Using any of the Moroccanoil Trademarks, or any other Moroccanoil trademark in connection with their business, including but not limited to:
 - (1) the word "MOROCCANOIL" (USPTO Registration No. 3,478,807 - with a first use in commerce date of January 1, 2007);
 - (2) "M Moroccanoil Design" - with the word Moroccanoil in white lettering written vertically and the letter M in orange written horizontally on the right side (USPTO Registration No. 3,684,910 - with a first use in commerce date of March 11, 2007);
 - (3) "M Moroccanoil Design" - with the word Moroccanoil in white lettering written horizontally and the letter "M" in orange written through the word Moroccanoil (USPTO Registration No. 3,684,909 - with a first use in commerce date of March 11, 2007).

c. Otherwise infringing the Moroccanoil Trademarks or any other Moroccanoil trademark;

d. Causing likelihood of confusion, deception, or mistake as to the source, nature, or quality of the goods of Defendants;

e. Using any false designation of origin or false representation concerning any Moroccanoil product;

f. Misrepresenting to anyone that they are authorized Moroccanoil manufacturers or distributors;

g. Misrepresenting to anyone that they carry, distribute or sell genuine Moroccanoil Products or that they obtain their products directly from Moroccanoil;

h. Any acts of unfair competition or unfair practice involving or affecting Moroccanoil trademarks or any Moroccanoil Product; and

i. Soliciting, assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in the above subparagraphs "a" through "h".

2. For an order directing Defendants, and each of them, to file with this Court and serve on Plaintiff within 30 days after service of an injunction, a report in writing and under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

3. For an order requiring Defendants, and each of them, to deliver to Plaintiff:

a. All products, literature, and other material bearing any counterfeits of the Moroccanoil Trademarks or any other infringement of Plaintiff's intellectual property or which falsely identifies the source of any products; and

b. Printing devices, labels, packing, bottles, advertising or any other items used in the manufacture, publicity, advertising or sale of products bearing any counterfeits of the Moroccanoil Trademarks.

4. For a seizure of all counterfeit Moroccanoil goods and marks;
5. For expedited discovery on the subject of the suppliers and purchasers of Defendants of counterfeit Moroccanoil Oil Treatment products in order that Plaintiff can quickly locate the source and locations of these illegal products;
6. For damages and remedies as provided by 15 U.S.C. §§ 1116 & 1117;
7. For damages and remedies as provided by 15 U.S.C. § 1125;
8. For damages and remedies as provided by 19 U.S.C. § 1526;
9. For damages according to proof and for all gains, profits, or advantages derived by Defendants by their unfair trade practices and unfair competition to the fullest extent allowed by common law but not less than \$1,000,000;
10. For punitive and exemplary damages;
11. For attorney's fees;
12. For costs;
13. For such other and further relief as the Court deems just and proper; and
14. Pursuant to Fed. Cir. P. 38(h), Moroccanoil, Inc., demands a jury trial.

Dated: April 15, 2011

Respectfully submitted,

/s/ John R. Keville

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